

**BEFORE THE SINGLE BENCH: ODISHA SALES TAX
TRIBUNAL, CUTTACK.
S.A.No. 59(C)/2019**

(Arising out of order of the Id.JCST (Appeal) CT & GST
Territorial Range, Cuttack-I, Cuttack, in Appeal Case No.
107121812000140, disposed of on dtd.29.12.2018)

**Present: Smt. Sweta Mishra
2nd Judicial Member**

M/s. Kansai Nerolac Paints Ltd.,
College Square,
Dist. Cuttack. Appellant

-Versus-

State of Odisha represented by the
Commissioner of Sales Tax,
Orissa, Cuttack. Respondent

For the Appellant : Mr. B.B. Panda, Advocate
For the Respondent : Mr. S.K. Pradhan, A.S.C. (C.T.)

(Assessment Period : 01.04.2012 to 31.03.2013)

Date of Hearing: 12.02.2021 *** Date of Order: 18.02.2021

ORDER

This appeal is directed against the order of the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), CT & GST Territorial Range, Cuttack-I, Cuttack (in short, FAA/JCST) in First Appeal No. 107121812000140 dtd.29.12.2018 in reducing the assessment order passed by the learned Sales Tax Officer, Cuttack-I East Circle, Cuttack (in short, STO) for the assessment period from 01.04.2012 to 31.03.2013 u/r.12(1) of the Central Sales Tax (Odisha) Rules, 1957 (in short, CST(O) Rules).

2. The facts of this case can be briefly stated thus :

The dealer-appellant, M/s. Kansai Nerolac Paints Limited, College Square, Cuttack, in the instant case, has been provisionally assessed U/r.12(1) of Central Sales Tax (Odisha) Rules, 1957 for the tax period from 01.04.2012 to 31.03.2013. The dealer-assessee sells goods in course of inter-state trade and commerce both at concessional rate of @2% as well as @13.5%. The dealer has sold goods amounting to Rs.41,60,730/- out of which, he has duly submitted declaration in Form 'C' to the tune of Rs.37,64,724/- attracting concessional rate of CST@2% which is calculated at Rs.75,294/-. For the balance amount of goods he has sold worth Rs.3,96,006/-, the dealer has failed to submit declaration Form 'C' without concessional rate of tax, which is liable to be taxed @13.5%, becomes calculated to Rs.53,461/-. The dealer has also sold goods amounting to Rs.1,03,870/- and held liable to tax @13.5%, which outcomes to Rs.14,022/-. Furthermore, the dealer has also despatched goods by way of branch transfer amounting to Rs.35,25,609/- and accordingly submitted declaration in Form 'F' to the tune of Rs.16,66,150/- only, but could not furnish the said 'F' form for the balance amount of Rs.18,59,459/- attracting CST @13.5% which becomes calculated to Rs.2,51,027/-. Accordingly, the Gross Turnover of the dealer is now determined at Rs.77,90,209/- and after allowing deduction of tax at different tax rates respectively, the Net Taxable Turnover is determined at Rs.61,24,059/-. Thus, the balance tax due works out to Rs.3,93,804/-. Since the dealer has already paid tax of Rs.89,316/- at the time of filing his

return, he is now liable to pay the balance tax demand of Rs.3,04,488/- at the stage of assessment for the aforesaid tax period.

3. Being aggrieved with the order of assessment, the dealer preferred first appeal before the learned First Appellate Authority/Joint Commissioner of Sales Tax (Appeal), Cuttack-I, Cuttack (in short, FAA/JCST), who in turn, allowed the appeal preferred by the dealer in part and reduced the tax due to Rs.1,01,526/- as per the provision of law.

4. Being further aggrieved with the order of the learned FAA/JCST, the dealer-assessee knocked the door of this Tribunal by way of filing this second appeal with the contention that, the order passed by the learned FAA/JCST is illegal and arbitrary, hence needs to be set-aside.

5. Cross objection has been filed by the State-respondent in this case.

6. The learned Advocate appearing on behalf of the dealer has challenged the order passed by the learned FAA. He has vehemently argued that, the order of the learned FAA is quite improper and prejudice to the very principle of natural justice. The learned FAA has not considered the submission and grounds no.4 & 5, which were quoted at Page No.4 of the first appeal order. The first appeal order amounts to non-application of mind. Hence, liable to be set-aside. The learned FAA has no power under the statute to enhance any liability under the Act without providing reasonable opportunity to the dealer as provided under the Act. The order shows that, no opportunity has been provided for enhancement of liability by

the learned FAA for which the order should be annulled for want of justice. The tax paid during the pending disposal of appeal has not been deducted while calculating the interest on non-paid amount as on the date of disposal of the appeal, which is illegal and baseless and not permissible in the eyes of law and liable to be reduced to the return figure. Sec.20(2) of CST Act has provided that, an appeal shall lie to the authority against any order passed by the highest appellate authority of a State under this Act determining issues relating to stock transfer or consignment of goods in so far as they involve a dispute of inter-state nature. "Highest appellate authority of a State" has been explained in explanation u/s.18(A)(5). In the AVR and assessment, there was no interest charged or no show cause notice has been issued u/r.(3)8A of the CST(O) Rules, inviting the show cause reply for charging of interest for non-payment of tax due as per return or assessment. The learned Advocate for the dealer has cited one order of this Tribunal in S.A.No.8(C)/2017-18 dtd.27.11.2018. Perused the order. The learned Advocate for the dealer has also cited three judgments viz., (a) **Sidhartha Engineering Pvt. Ltd. Vrs. Assistant Commisioner of Sales Tax & Another (1999) 115 STC 478 (Ori)**. (b) **Nasiruddin Vrs. Sitaram Agarwal (2003) 2 SCC 577** and (c) **Commissioner of Income Tax Vrs. Badharaja & Company (1994) SUPP (I) SCC 280**. The learned Advocate for the dealer has prayed to allow the appeal filed by the dealer and to set-aside the order of the learned FAA.

7. On the other hand, during the course of hearing, learned Addl. Standing Counsel, Mr. Pradhan argued that, the

grounds raised in the appeal petition are misconceived and liable to be dismissed in toto. The dealer-appellant was given sufficient opportunity to produce the documents in favour of his stand, but the dealer failed to produce the same. The order of the learned FAA appears to be just and proper. There is no reasonable merit in the second appeal filed by the dealer, which is not sustainable in the eyes of law. The learned AO and FAA have rightly completed the assessment/appeal basing on the statutory provisions under the Acts and Rules with regard to the points raised by the dealer. The appellant-dealer in the instant case engaged in manufacturing of liquefied or compressed inorganic industrial gases or medical gases for sale inside and outside State of Odisha. For non-submission of statutory declaration forms, levy of interest on the differential tax payable is automatic and arises by operation of law from the date on which the tax was required to be paid. The order of the learned FAA is crystal clear with respect to the other points raised by the dealer. He has dealt each and every item which is self-explanatory and requires no further interference. So, he has prayed to dismiss the appeal filed by the dealer and to confirm the order of the learned FAA.

8. Heard learned Advocate, Mr. B.B. Panda, appearing on behalf of the dealer and learned Addl. Standing Counsel, Mr. Pradhan on behalf of the State. Gone through the grounds of appeal, impugned orders of appeal and assessment and arguments of both the sides at the time of hearing. In view of the facts and circumstances of the case and after analysing the points raised in this appeal, I am of the considered opinion

that, the points raised by the learned Advocate for the dealer is satisfactory and this is a fit case, where the matter should be remanded back to the learned FAA to re-compute the tax liability of the dealer. Accordingly, it is ordered.

9. The appeal filed by the dealer is allowed on contest. The order of the learned FAA is hereby set-aside. The matter is remanded back to the learned FAA and he is directed to re-compute the tax liability of the dealer after giving the dealer a reasonable opportunity of being heard within a period of three months from the date of receipt of this order. The cross objection filed by the State-respondent is disposed of accordingly.

Dictated and Corrected by me,

Sd/-
(S. Mishra)
2nd Judicial Member

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